

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

Plaintiff

vs.

**8:07-CR-200
(GLS)**

DANNY THERIAULT,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE UNITED STATES:

Hon. Glenn T. Suddaby
United States Attorney
100 South Clinton Street
Syracuse, New York 13261-0663

CARL G. EURENIUS
Assistant U.S. Attorney

FOR DANNY THERIAULT:

Office of William J. Gray
112 State Street
Albany, New York 12207

WILLIAM J. GRAY, ESQ.

**Gary L. Sharpe
District Court Judge**

Decision and Order

Together with six others, Danny Theriault has been charged with marijuana distribution and importation conspiracies. See *Indictment*, Dkt. No. 1; see also 21 U.S.C. §§ 846, 963. Pending are omnibus cross-

motions filed by the government and Theriault. See FED. R. CRIM. P. 12(b); see also *Gov't Motion*, Dkt. Nos. 64, 66-67; *Theriault Motion*, Dkt. Nos. 74, 76-77; *Gov't Response*, Dkt. No. 79.

In discovery, the government disclosed statements made by Theriault to the police. See FED. R. CRIM. P. 16(a)(1)(B); see also *Gov't Summary of Rule 16 Disclosures*, Dkt. No. 79-3. The government and Theriault agree that the admissibility of those statements is dependent on the court's decision following a suppression hearing. The parties agree that if the statements are admissible, the court should grant the government's motion to sever Theriault because his statements will prejudice his co-defendants.¹ See FED. R. CRIM. P. 14. Therefore, the government's motion to sever Theriault for trial is denied with leave to renew following the court's decision on Theriault's motion to suppress.

Turning to the remaining relief sought by Theriault, he requests judicial review of the grand jury minutes to determine if sufficient evidence supports the charge of "Kidnapping in the Second Degree." The court

¹Theriault's agreement is difficult to discern because he simultaneously moves to sever, but opposes the government's motion to sever. A fair reading of his opposition reflects his belief that his statements should be suppressed which would then negate the basis for the government's motion. Of course, that does not explain his motion to sever. In any event, he provides no factual or legal support for his motion. Therefore, to the extent he separately seeks severance, his motion is denied.

presumes that Theriault has simply extracted boilerplate from an unrelated state court motion because there is no kidnaping charge in this federal indictment. In any event, the motion fails to establish or even assert “particularized need” or “compelling necessity,” either of which might support his application. See *United States v. Elliott*, 363 F. Supp. 2d 439, 451 (N.D.N.Y. 2005) (citations omitted). Therefore, it is denied. Theriault also seeks to join co-defendants’ motions. His motion is denied as moot since there are no such motions.

Lastly, Theriault seeks a bill of particulars specifying all conspiratorial acts and other evidentiary details related to the indicted conduct. See *Gray Aff.*, Dkt. No. 74; *Supplemental Theriault MOL*, Dkt. No. 74-2; see also FED. R. CRIM. P. 7(f). While the decision to grant his request is discretionary, see *United States v. Chen*, 378 F.3d 151, 162-63 (2d Cir. 2004), the exercise of that discretion is dependent on a demonstrated need to prepare a defense or avoid surprise at trial. See *United States v. Torres*, 901 F.2d 205, 234 (2d Cir. 1990) (citations omitted). Theriault has demonstrated no such need. Furthermore, acquisition of evidentiary detail is not the purpose of a bill of particulars. *Id.* at 234. So too, extensive discovery disclosed by the government together with supplemental oral and written disclosures

can obviate the need for a bill of particulars. See *Chen*, 378 F.3d at 163. Here, not only did the government fully comply with its discovery obligations, it even disclosed a copy of its power point presentation to the grand jury. See *Gov't Summary of Rule 16 Disclosures*, Dkt. No. 79-3. Additionally, the indictment details the manner and means by which the named co-conspirators committed the offenses. See *Indictment* at pp. 2-3, Dkt. No. 1; cf. *Elliott*, 363 F. Supp. 2d at 450. And, the government has recited further evidentiary detail in its motion response. See *Gov't Response*, Dkt. No. 79-3. When a conspiracy is charged, the government need not disclose the date a defendant is alleged to have joined the conspiracy, other known and unknown co-conspirators, precise dates and locations when and where the defendant assisted the conspiracy, and the means by which the defendant furthered the conspiracy. See *United States v. Cephas*, 937 F.2d 816, 823 (2d Cir. 1991). Accordingly, Theriault's motion for a bill of particulars is denied.

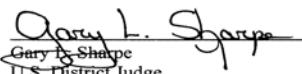
For the reasons recited herein, it is hereby
ORDERED that the government's motion for a severance (Dkt. Nos. 64, 66-67) is **DENIED** with leave to renew following a suppression hearing; and it is further

ORDERED that Theriault's motion seeking judicial review of the grand jury minutes, severance, permission to join co-defendants' motions, and a bill of particulars is **DENIED**; and it is further

ORDERED that the Clerk schedule a suppression hearing.

SO ORDERED.

Date: December 12, 2007
Albany, New York



Gary L. Sharpe
U.S. District Judge